

PT 02-31

Tax Type: Property Tax

Issue: Government Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

HOUSING AUTHORITY)	Docket #s	99-82-168
OF EAST ST. LOUIS)	99-82-172, 99-82-173, and 99-82-176	
Applicant)		
v.)	A.H. Docket #	00-PT-0007
)		
)	P. I. #	Please see attachment.
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Kip J. Bilderback of Millsap and Singer, P.C. for the Housing Authority of East St. Louis; Mr. Kent Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis:

The hearing in this matter was held on December 19, 2001, to determine whether St. Clair County Parcel Index Nos. 02-17-0-207-012, 02-07-0-415-017 through 02-07-0-415-019, 02-17-0-205-019, 02-09-0-304-001, 02-09-0-304-002, 02-09-0-304-010, 02-09-0-304-011, 02-09-0-304-013, 02-09-0-304-022 through 02-09-0-304-027, 02-09-0-304-030, 02-17-0-205-013, 02-17-0-205-018 and 02-17-0-207-038 qualified for exemption during the 1999 assessment year.

Ms. Barbara Erb, administrative coordinator for the Modernization and Development Departments of the Housing Authority of East St. Louis, (hereinafter referred to as the "Applicant") was present and testified on behalf of applicant.

The issue in this matter is whether these parcels were being used or being adapted for exempt use by the applicant during the 1999 assessment year. After a thorough review of the facts and law presented, it is my recommendation that the requested exemptions be denied. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 **ILCS** 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that St. Clair County Parcel Index Nos. 02-17-0-207-012, 02-07-0-415-017 through 02-07-0-415-019, 02-17-0-205-019, 02-09-0-304-001, 02-09-0-304-002, 02-09-0-304-010, 02-09-0-304-011, 02-09-0-304-013, 02-09-0-304-022 through 02-09-0-304-027, 02-09-0-304-030, 02-17-0-205-013, 02-17-0-205-018 and 02-17-0-207-038 did not qualify for a property tax exemption for the 1999 assessment year were established by the admission into evidence of Dept. Ex. Nos. 1 through 12. (Tr. pp. 9, 11, 13)

2. On November 1, 1999, the Department received the request for exemption of eighty-seven properties located in St. Clair County including St. Clair County Parcel Index Nos. 02-17-0-207-012, 02-07-0-415-017 through 02-07-0-415-019, 02-17-0-205-019, 02-09-0-304-001, 02-09-0-304-002, 02-09-0-304-010, 02-09-0-304-011, 02-09-0-304-013, 02-09-0-304-022 through 02-09-0-304-027, 02-09-0-304-030, 02-17-0-205-013, 02-17-0-205-018 and 02-17-0-207-038. On January 21, 2000, the Department denied these requested exemptions finding that the above listed properties were not in exempt use. Applicant timely protested the denial and requested a hearing. The hearing held on December 19, 2001, was pursuant to that request. (Dept. Ex. No. 1)

3. The mission of applicant is to provide safe, decent, and sanitary housing for low-income persons residing in the community. (Tr. p. 20)

4. The median income of the residents of the City of East St. Louis is less than \$10,000 per household. The area is economically depressed. (Tr. p. 21)

5. Properties are dilapidated in East St. Louis. Overgrowth, weeds, brush, and trash surround vacant houses. Burned and half-burned out houses are adjacent to occupied residences. (Tr. pp. 21-22)

6. The police are unable to patrol the public housing developments sufficiently. Crime, illegal dumping, and vandalism are so prevalent that applicant has hired a full time security force to protect residents of its housing projects. The applicant is responsible for clearing any debris on its properties. (Tr. pp. 22-23, 83)

7. In 1989, applicant was mandated by the United States Department of Housing and Urban Development (hereinafter referred to as "HUD") to demolish 500 public housing units. HUD agreed to provide funding to replace the units under a "One for One Replacement Act " in effect at that time. (Tr. pp. 25-26)

8. Applicant did not have the staff capacity to replace all 500 units at one time, so the requests for grants under the replacement act were broken into four separate applications. HUD Project No. IL06P0001041, 42, and 43 requested funding for 73 units planned to be developed. The application was approved. The applicant intended to use a number of the subject properties for the 73 unit development. (Tr. pp. 25-26)

9. As part of the approval process with HUD, the applicant had to submit land parcel descriptions that it intended to obtain for the development. Applicant had identified the land it wished to acquire for the project when the approval was granted¹. (Tr. pp. 26-27)

10. Applicant has a number of approval processes it must go through in relation to HUD funding including obtaining the architect, general contractor, and the bidding process for construction of the planned development. Concurrently with these processes, applicant was negotiating the purchase of the properties needed. (Tr. pp. 32-33)

11. Applicant acquired Parcel Index Nos. 02-09-0-304-001, 02-09-0-304-002, 02-09-0-304-010, 02-09-0-304-011, 02-09-0-304-013, 02-09-0-304-022 through 02-09-0-304-027, 02-09-0-304-030, 02-17-0-205-013, 02-

¹ Applicant was confused as to when the approval was granted, either September 1993 (Tr. p. 26) or 1995 (Tr. p. 28).

17-0-205-018, 02-17-0-205-019, 02-17-0-207-012, and 02-17-0-207-038 between 1996 and 1998 as part of the planned development of the 73 units. The properties were vacant. (Dept. Ex. No. 1; Tr. p. 83)

12. The demolition plans and architect's drawings for the proposed buildings for the 73 units are dated July 27, 1997. (Applicant's Ex. No. 1; Tr. pp. 34-41)

13. HUD requires a bidding process for any expenditure that exceeds \$1,000.00. (Tr. pp. 42)

14. By the time applicant obtained bids for construction of the 73 unit development, the amount of the grant money awarded was insufficient to cover the costs of construction due to inflation. The bids were almost two million dollars more than the amount of grant money received. (Tr. p. 26)

15. Applicant requested additional money from HUD to construct the 73 units. The replacement act funding was no longer available. Pursuant to discussions with HUD, applicant decided to reduce the number of units to 59. The 59 units did not include construction on the above identified parcel numbers at issue. The 59 units were constructed. The subject properties are either across the street from the 59 units developed or within a mile of those units. (Tr. pp. 27, 30, 51)

16. No development of the subject parcels took place during construction of the 59 units. (Tr. p. 51)

17. The architectural plans dated July 27, 1997, for the development of the 73 units will never be used for the properties at issue. (Applicant's Ex. No. 1; Tr. p. 71)

18. In 1995, another of the four replacement act applications submitted to HUD was approved. That application is for 361 units. (Tr. pp. 53-54)

19. Applicant is currently working with HUD on a mixed income program called a "Hope 6 Project" for construction of 361 units. Applicant hopes to increase the planned 361 unit development into 600 units. (Tr. pp. 55-56)

20. A "Hope 6 Project" involves private funds combined with public funds and tax credits. (Tr. pp. 55-57)

21. If the “Hope 6 Project” plan were carried out, the developer of the plan would be the eventual owner of the properties. The developers are not exempt organizations. (Tr. pp. 73, 76, 79)

22. Applicant has no final determination that Parcel Index Nos. 02-09-0-304-001, 02-09-0-304-002, 02-09-0-304-010, 02-09-0-304-011, 02-09-0-304-013, 02-09-0-304-022 through 02-09-0-304-027, 02-09-0-304-030, 02-17-0-205-013, 02-17-0-205-018, 02-17-0-205-019, 02-17-0-207-012, and 02-17-0-207-038 will be used for the “Hope 6 Project”; however, applicant is actively working on it. (Tr. pp. 76-80)

23. Parcel Index Nos. 02-07-0-415-017 through 02-07-0-415-019 were purchased by applicant in conjunction with a 66 unit redevelopment. At the time of acquisition, applicant had approval to develop the properties as public housing. The properties are contiguous to other land already owned by applicant. A derelict church was on the properties when purchased. Upon purchase, applicant’s immediate intent was to clear the properties. In 1998 applicant modified the demolition contract for the 66 units to include demolition of the church. The church was demolished in conjunction with the demolition on the adjacent properties in 1998-1999. The construction trailer used in the 66 unit redevelopment project was parked on the subject properties. (Dept. Ex. No. 1; Tr. pp. 57-66, 75-76)

24. Once redevelopment of the 66 units was completed, applicant decided it didn’t want too high a concentration of low income housing in the area. Applicant decided to leave the land open as “green space” and may develop it into a playground for children if funding is received. There has been no grass planted or landscaping done on Parcel Index Nos. 02-07-0-415-017 through 02-07-0-415-019 as of January 2000. Applicant retains the option to put additional housing on the properties. (Dept. Ex. No. 1; Tr. pp. 57-66, 75-76)

CONCLUSIONS OF LAW:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-95, which exempts certain property from taxation as follows:

§ 15-95. Housing authorities. All property of housing authorities created under the Housing Authorities Act² is exempt, if the property and improvements are used for low rent housing and related uses. . . .

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

The statute granting the exemption for housing authorities has been upheld by the Illinois Supreme Court in Springfield Housing Authority v. Overaker, 390 Ill. 403 (1945) (hereinafter referred to as “Springfield Housing”), Krause v. Peoria Housing Authority, 370 Ill. 356 (1939), and Zurn v. City of Chicago, 389 Ill. 114 (1945)

In Springfield Housing, *supra*, the court, relying on Krause v. Peoria Housing Authority, *supra*, found that “the property of a housing authority, organized under the Housing Authorities Act, is entitled to a general exemption from taxation as a public charity . . .” *Id.* at

² 310 **ILCS** 10/1 ET SEQ.

375. Applicant avers that the “general exemption” language should be given additional weight and the use by the applicant of the properties at issue in 1999 should qualify for exemption. (Applicant’s Brief pp. 34)

The Department asserts that the use of the properties by the Springfield Housing Authority was what was determinative of the court’s opinion. The issue in Springfield Housing was whether the receipt of rent by the housing authority meant that the property was leased or otherwise used with a view to profit. The court held that the housing authority does not lose its charitable character and consequent exemption from taxation merely because the enterprise yields income. Rather, where the entire property is used directly and exclusively for charitable purposes, the applicant is entitled to an exemption. *Id.* at 375.

I agree with the Department, that pursuant to Springfield Housing, an analysis of applicant’s use of the property for charitable purposes during the taxable year at issue is necessary. The taxable year at issue is 1999. Applicant acquired Parcel Index Nos. 02-09-0-304-001, 02-09-0-304-002, 02-09-0-304-010, 02-09-0-304-011, 02-09-0-304-013, 02-09-0-304-022 through 02-09-0-304-027, 02-09-0-304-030, 02-17-0-205-013, 02-17-0-205-018, 02-17-0-205-019, 02-17-0-207-012, and 02-17-0-207-038 between 1996 and 1998 as part of a planned development of 73 units.

The applicant did not receive the necessary amount of funding for construction of all of the 73 units under HUD project No. IL06P0001041, 42, and 43. The applicant contacted HUD and could not get additional replacement act funding so applicant was able to build only 59 of the 73 units planned. None of the 59 units were constructed on the subject properties. Applicant then decided to pursue a “Hope 6 Project” for construction on some of the subject real estate.

If the “Hope 6 Project” comes to fruition, the developer will eventually own the land. The “Hope 6 Project” had not been implemented as of the time of the hearing, but applicant is working toward it. The architectural plans dated July 27, 1997, for the planned 73 unit development will not be used for the real estate at issue.

Applicant relies upon Weslin Properties, Inc. v. Illinois Dept. of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987) and Norwegian American Hospital, Inc. v. Department of Revenue, 210 Ill.App.3d 318 (1st Dist. 1991) for the proposition that if there is sufficient architectural preparation and adaptation of a parcel for exempt use, real estate may qualify for a property tax exemption.

In Weslin, as in Norwegian, actual physical adaptation for an exempt use took place prior to and during the taxable years at issue. In Weslin, during the year that the property qualified for exemption, berms were constructed on the property, meetings were held with the architect to review the master plan, the development of the master site plan and schematic drawings were authorized, the planning committee recommended that the site plan be approved, the architect began the design development, and the urgent care plan was approved. The urgent care center was completed within two years. In Norwegian, the hospital formulated a campus plan four years before the year of the requested exemption. During those four years, the hospital met with architects, a sign and directional program was implemented, buildings were razed, properties were seeded with grass or landscaped with flowers and trees, pedestrian walkways, benches, food service, and picnic areas were installed. As of the date of the hearing, the hospital had spent in excess of one million dollars on the campus plan.

Applicant's use of Parcel Index Nos. 02-09-0-304-001, 02-09-0-304-002, 02-09-0-304-010, 02-09-0-304-011, 02-09-0-304-013, 02-09-0-304-022 through 02-09-0-304-027, 02-09-0-304-030, 02-17-0-205-013, 02-17-0-205-018, 02-17-0-205-019, 02-17-0-207-012, and 02-17-0-207-038 for exempt purposes in 1999 is speculative at best. As a result of the speculative nature of the applicant's use of these properties, it did not do any actual development of them, as was done in Weslin and Norwegian.

While applicant may intend to use the subject properties for charitable purposes sometime in the future, applicant has not established that adaptation or exempt use took place in 1999. In the case of People ex rel. Pearsall v. The Catholic Bishop of Chicago, 311 Ill. 11 (1924), the Illinois Supreme Court held that the mere fact that a property was intended to be used

for an exempt purpose was not sufficient to exempt said property. The court required that the actual primary exempt use must have begun for the property to be exempt. Comprehensive Training and Development Corp. v. County of Jackson, 261 Ill.App.3d 37 (5th Dist. 1994). Evidence that land was acquired for an exempt purpose does not eliminate the need for proof of actual use for that purpose. Intention to use is not the equivalent of use. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971)

I therefore recommend that Parcel Index Nos. 02-09-0-304-001, 02-09-0-304-002, 02-09-0-304-010, 02-09-0-304-011, 02-09-0-304-013, 02-09-0-304-022 through 02-09-0-304-027, 02-09-0-304-030, 02-17-0-205-013, 02-17-0-205-018, 02-17-0-205-019, 02-17-0-207-012, and 02-17-0-207-038 remain on the St. Clair County tax rolls for the 1999 assessment year.

Regarding Parcel Index Nos. 02-07-0-415-017 through 02-07-0-415-019, at the time of acquisition applicant had approval to develop the properties as public housing. The properties are contiguous to other land applicant owns and was redeveloping into a 66 unit project. During 1998 and 1999 the derelict church on the properties was demolished and a construction trailer was on the real estate. The applicant may use the properties for additional housing development or as a playground for children if funding is received. At the present time, the real property is bare, undeveloped, vacant land. Once again, applicant's use of the subject properties for charitable purposes is speculative and applicant's intent to use the properties for exempt purposes will not qualify the properties for exemption for the 1999 assessment year.

It is therefore recommended that St. Clair County Parcel Index Nos. 02-17-0-207-012, 02-07-0-415-017 through 02-07-0-415-019, 02-17-0-205-019, 02-09-0-304-001, 02-09-0-304-002, 02-09-0-304-010, 02-09-0-304-011, 02-09-0-304-013, 02-09-0-304-022 through 02-09-0-304-027, 02-09-0-304-030, 02-17-0-205-013, 02-17-0-205-018 and 02-17-0-207-038 remain on the tax rolls for 1999 and be assessed to the applicant, the owner thereof.

Respectfully Submitted,

Date: May 1, 2002

Barbara S. Rowe
Administrative Law Judge

ATTACHMENT

Docket number:

99-82-168

99-82-172

99-82-173

99-82-176

Parcel Index number:

02-17-0-207-012

02-07-0-415-017

02-07-0-415-018

02-07-0-415-019

02-17-0-205-019

02-09-0-304-001

02-09-0-304-002

02-09-0-304-010

02-09-0-304-011

02-09-0-304-013

02-09-0-304-022

02-09-0-304-023

02-09-0-304-024

02-09-0-304-025

02-09-0-304-026

02-09-0-304-027

02-09-0-304-030

02-17-0-205-013

02-17-0-205-018

02-17-0-207-038

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